No. 80-780

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

ROWAN COMPANIES, INC.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF METROPOLITAN HARTFORD, INC. AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

	PAGE
Interest of Amicus Curiae	1
Summary of Argument	2
Argument	4
I. The Term "Wages" Has the Same Basic Meaning for All Employment Taxes	4
A. Congress Intended the Definition of "Wages" to be Virtually Identical for All Federal Employment Taxes	4
i. Revenue Act of 1942	5
ii. Current Tax Payment Act of 1943	6
iii. Impact of the Central Illinois Decision on the Definition of Wages	8
II. Meals Provided for the Employer's Convenience are not Remuneration and, Thus, Cannot be Taxable Wages for Purposes of Either Withholding Tax Liability or Computation of Benefits Under FICA or FUTA	12
Conclusion	16
Appendix	1a

TABLE OF AUTHORITIES

PAGE

Cases.

Central Illinois Public Service Co. v. *United States*, 435 U. S. 21 (1978) 8, 9, 10, 12

Goldsboro Christian Schools, Inc. v. *United States*, unreported decision, 79-1 USTC ¶ 9266 (E. D. N. C. 1978) 13

Hotel Conquistador, Inc. v. *United States*, 597 F. 2d 1348 (Ct. Cl. 1979), cert. denied, 444 U. S. 1032 (1980) 12

Commissioner v. *Kowalski*, 434 U. S. 77 (1977) 12

Kresge Co. S.S. v. *United States*, 218 F. Supp. 240 (E. D. Mich. 1963) 13

Kresge Co. S.S. v. *United States*, 379 F. 2d 309 (6th Cir. 1967) 13

Oscar Mayer & Co., Inc. v. *United States*, unreported decision, 79-2 USTC ¶ 9572 (W. D. Wis. 1979), *aff'd*, 623 F. 2d 1223 (7th Cir. 1980) 10, 11

Pacific American Fisheries, Inc. v. *United States*, 138 F. 2d 464 (9th Cir. 1943) 13

Rowan Companies, Inc. v. *United States*, 624 F. 2d 701 (5th Cir. 1980) 14

Royster Co. v. *United States*, 479 F. 2d 387 (4th Cir. 1973) 10, 11, 12

Young Men's Christian Association of Metropolitan Hartford, Inc. v. *United States*, (Ct. Cl. No. 371-79T) 2

Statutes and Regulations.

Current Tax Payment Act of 1943, 57 Stat. 126 (1943) 5, 6, 7

Federal Insurance Contributions Act (53 Stat. 1) ... 4

Federal Unemployment Tax Act (53 Stat. 1) 4

PAGE

Internal Revenue Code of 1954 (26 U. S. C. (1976 ed.)):
- Sec. 3101 ..... 4, 1a
- Sec. 3102 ..... 4, 1a
- Sec. 3111 ..... 4, 1a
- Sec. 3121 ..... 4, 9, 2a
- Sec. 3301 ..... 4, 2a
- Sec. 3306 ..... 4, 9, 2a
- Sec. 3401 ..... 4, 13, 3a
- Sec. 3402 ..... 4, 9, 3a

Revenue Act of 1942, 56 Stat. 798 ..... 5, 6
Social Security Act of 1935, 49 Stat. 620 ..... 5, 13

Miscellaneous.

H. R. Rep. No. 268, 78th Cong., 1st Sess. (1943) ... 7
H. R. Rep. No. 401, 78th Cong., 1st Sess. (1942) ... 7
H. R. Rep. No. 510, 78th Cong., 1st Sess. 28 (1943) 8
H. R. Rep. No. 2333, 77th Cong., 2nd Sess. 128 (1942) 6
Letter from Treas. Sec. G. William Miller to Hon. Daniel Rostenkowski (Jan. 16, 1981) 15
Revenue Bill of 1942, H. R. 7378, 77th Cong. 2nd Sess. (1942) 5
Rev. Rul. 76-71, 1976-1 C. B. 308 13
Rev. Rul. 76-548, 1976-2 C. B. 308 13
S. Rep. No. 221, 78th Cong., 1st Sess. (1943) 2, 7
S. Rep. No. 1631, 77th Cong., 2nd Sess. 166 (1942) 5, 6

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MEMORANDUM FOR THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF METROPOLITAN HARTFORD, INC. AS AMICUS CURIAE IN SUPPORT OF PETITIONER

The Young Men's Christian Association of Metropolitan Hartford, Inc. ("YMCA of Metropolitan Hartford"), with the consent of the parties, submits this Memorandum as *Amicus Curiae* in support of the petitioner.

INTEREST OF THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF METROPOLITAN HARTFORD, INC.

The YMCA of Metropolitan Hartford, Inc. is a not-for-profit corporation that is exempt from federal income tax but is subject to Social Security ("FICA") taxes.

The YMCA of Metropolitan Hartford, Inc. is a party to litigation in the United States Court of Claims involving essentially the identical legal question presented by this case.

YMCA of Metropolitan Hartford, Inc. in *Young Men's Christian Association of Metropolitan Hartford, Inc.* v. *United States,* (Ct. Cl. No. 371-79T), seeks a refund of FICA taxes paid (as a result of deficiencies asserted by the Internal Revenue Service) with respect to the value of meals and lodging provided to resident summer camp staff. That action was brought as a test case on behalf of hundreds of YMCA summer camps nationwide. The YMCA of Metropolitan Hartford, Inc., and certain other YMCA organizations, operate summer camps virtually all of which are located in rural areas miles away from commercial eating and lodging facilities. These YMCA organizations require certain employees to reside on the camp premises and to dine with the campers. The YMCAs provide meals and lodging to these employees without charge for the convenient and efficient operation of the summer camps. The YMCA's situation is similar to the petitioner's situation in this case in that the Internal Revenue Service has not claimed that the value of the meals or lodging provided as a convenience to the employer is subject to income tax withholding. However, the Service has claimed that the value of such meals and lodging constitutes wages for FICA tax purposes.

SUMMARY OF ARGUMENT

The federal employment tax system imposes four taxes upon employees and employers. The term "wages" carries an enormous significance to every employer because each of the four employment taxes bases an employer's obligation to withhold and pay federal employment taxes on the meaning of "wages." If the definition of "wages" changes, so does the obligation of every employer.

Legislative history under the federal employment tax acts demonstrates Congressional intent to adopt a common definition for the term "wages" to confine the scope of employers' obligations. "Simplicity and ease of administration" provided the underpinnings of the withholding tax system. S. Rep. No. 221, 78th Cong., 1st Sess. at 17. The government and the court below would not only ignore Congressional intent but also judicial precedent and administrative pronouncements that

have recognized that noncompensatory payments to employees made in furtherance of the employer's business do not fall within the category of "wages" for federal employment tax purposes.

The court of appeals below premised its expansion of the definition of "wages" for FICA and FUTA purposes upon the erroneous assumption that such an expansion would further the underlying purpose of the social security and unemployment insurance system. The result, however, could be exactly the opposite. The government, with the aid of the decision of the court below, would not only substitute confusion for the avowed objectives of simplicity and administrative ease but also would place hundreds of employers in violation of the employment tax provisions. Gov't. Pet. at 11.

ARGUMENT

I.

THE TERM "WAGES" HAS THE SAME BASIC MEANING FOR ALL EMPLOYMENT TAXES

The federal employment tax system imposes four taxes upon employees and employers. Two taxes are imposed under the Federal Insurance Contributions Act ("FICA"). One FICA tax is imposed upon an employee by requiring his employer to withhold the tax from the employee's "wages," §§ 3101, 3102;[1] and a separate FICA tax is imposed directly upon the employer based upon the "wages" paid to an employee. § 3111. The Federal Unemployment Tax Act ("FUTA") imposes a tax directly upon the employer, based upon "wages" paid to an employee. § 3301. Finally, section 3402 imposes an additional obligation upon an employer to withhold income tax from "wages" paid to an employee.

A. Congress Intended the Definition of "Wages" to Be Virtually Identical for All Federal Employment Taxes.

Congress defined the term "wages" in each employment tax provision with nearly identical language.

Both FICA and FUTA define "wages" as "all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash . . ." (§§ 3121(a) and 3306(b)) and both define "employment" as "any service . . . performed . . . by an employee for the person employing him" (§§ 3121(b) and 3306(c)). The income tax withholding provision defines the term "wages" as "all remuneration . . . for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash. . . ." (§ 3401(a)).

---

[1] All section references are to the Internal Revenue Code of 1954, Title 26 U. S. C. (1976), unless otherwise indicated.

The first employment tax withholding provision was enacted by the Social Security Act of 1935. 49 Stat. 622. Income tax withholding was proposed by the Treasury and passed by the House as part of the Revenue Bill of 1942, H. R. 7378, 77th Cong., 2d Sess., but was subsequently eliminated by the Senate. Instead, Congress enacted a "temporary" withholding to collect the "Victory Tax" enacted by the Revenue Act of 1942, 56 Stat. 798 (1942). In the following year Congress enacted a permanent income withholding provision as part of the Current Tax Payment Act of 1943, 57 Stat. 126 (1943). The withholding structure enacted in 1943 continues essentially unchanged under the present Internal Revenue Code of 1954.

The legislative histories of both the Revenue Act of 1942 and the Current Tax Payment Act of 1943 demonstrate that Congress intended to adopt the same definition for the term "wages" for income tax withholding as it adopted for the Victory Tax and the Social Security Act of 1935.

i. Revenue Act of 1942

As originally proposed by the Treasury and passed by the House of Representatives, the Revenue Bill of 1942 provided for withholding of income tax at the source upon "wages, salaries, corporation dividends and corporation bond interest." Revenue Bill of 1942, H. R. 7378, 77th Cong., 2d Sess. § 153. As an alternative, the Senate proposed a "Victory Tax" upon income which required withholding of tax only upon "wages." S. Rep. No. 1631, 77th Cong., 2d Sess. 165-72 (1942). Both the House Ways and Means Committee and Senate Finance Committee intended the term "wages" to have precisely the same coverage as the term had for social security purposes:

> "The term 'wages' as used in the supplement is defined in section 425(b). It includes all remuneration whether designated as salary, wages, fees, commissions, etc., and whether paid in cash or property, if paid for services performed by an employee for his employer. Remuneration received for certain types of services, however, is excepted and is not subject to withholding ... *These*

> *exceptions are identical with the exceptions extended to such services for social security tax purposes and are intended to receive the same construction and have the same scope.*" (H. R. Rep. No. 2333, 77th Cong., 2d Sess. (1942) at 126 (emphasis added); S. Rep. No. 1631, 77th Cong., 2d Sess. at 166, contains substantially identical language.)

Throughout the legislative history to the Revenue Act of 1942, the House and Senate Committees demonstrated their intention to:

> "simplify the process of collection at the source and help to minimize the requirements for additional business machines by employers charged with the duty of collecting and accounting for the tax." S. Rep. No. 1631, *supra,* at 171.

Such simplification resulted in part from adopting the identical definition of wages used for social security purposes.

In conference, the House's provision for income tax withholding was deleted in favor of the Senate's Victory Tax provisions, but the basic definition of wages remained unchanged. Revenue Act of 1942, 56 Stat. 798 (1942).

ii. Current Tax Payment Act of 1943

The Current Tax Payment Act of 1943, Act of June 9, 1943, 57 Stat. 126, § 1621, applied the Victory Tax withholding provisions to the income tax and made withholding permanent. The House Committee adopted the then-existing concept of "wages" to implement a pay-as-you-go program of tax payment:

> "*The general definition of the term 'wages' contained in section 465(a) is the same as that contained in existing law.* The term is generally defined to include all remuneration whether designated as salary, wages, fees, commissions, etc., and whether paid in cash or property, if paid for services performed by an employee for his employer. Certain of the exceptions provided in the existing law with respect to remuneration paid for given types of services are contained in identical language." (H. R. Rep. No. 268, 78th Cong., 1st Sess. (1943) at 14 (emphasis added).)

The Senate reemphasized the fact that the then-existing definition of "wages" had not changed. The Senate Report contains language substantially identical to the House Report. S. Rep. No. 221, 78th Cong., 1st Sess. (1943) at 17.

The Current Tax Payment Act of 1943, 57 Stat. 126, incorporated this definition of wages for withholding purposes. H. R. Rep. No. 401, 78th Cong., 1st Sess. (1943) at 22. Although additional language was added to the bill to clarify certain exceptions, the basic definition of "wages" was never changed.

In response to objections raised by employers not wishing to be conscripted as collection agents, Congress simplified the withholding process by coordinating the income tax withholding structure with the then existing Social Security tax structure.

> "Your committee bill adopts the basic system of collection at source as provided in the House bill but makes a number of technical changes which are explained below. *Under the bill as reported by your committee, the methods of collection, payment, and administration of the withholding tax have been coordinated generally with those applicable to the Social Security tax imposed on employees under section 1400 of the code. This proposal has been made in order to facilitate the work of both the Government and the employer in administering the withholding system.*" S. Rep. No. 221, *supra*, at 17 (emphasis added).)

The conference report further demonstrates that Congress ntended to coordinate the income tax withholding provisions vith those of the Social Security tax in order to facilitate the ıdministration of the withholding system:

> "The Senate bill adopts the basic system of collection at source as provided in the House bill but makes a number of technical changes which are explained below. Under the bill as passed by the Senate, the methods of collection, payment, and administration of the withholding tax were coordinated generally with those applicable to the Social Security tax imposed on employees under section 1400 of the code. *This proposal was made in order to facilitate the work of both the Government and the employer in administering the withholding system.*" (H. R. Rep. No. 510, 78th Cong., 1st Sess. (1943) at 28 (emphasis added).)

The conference committee specifically rejected the House's ɔroposal for computing withholding (requiring different rates ;o be applied to different portions of wages) in favor of the Senate bill's single bracket, single percentage, withholding:

> "the employer will not be required to make two separate computations and add the result of each in order to arrive at the amount of tax required to be withheld from any one employee." (*Id.* at 33.)

Unless the definition of "wages" is the same for FICA, FUTA and income withholding taxes, an employer would have to calculate separately three different amounts as wages. This would impose a burden on employers that Congress specifically intended to avoid.

iii. Impact of the Central Illinois Decision on the Definition of Wages

In *Central Illinois Public Service Co.* v. *United States,* 435 U. S. 21 (1978), this Court held that cash reimbursements paid to employees for meal expenses did not constitute "wages" subject to federal income tax withholding even though the reimbursements represented income to the employees. The

Court considered the nature of the employer's withholding obligation under § 3402, and the fact that Congress, in the interest of simplicity and ease of administration, confined the term "wages" to a narrow and precise standard:

> "An expansive and sweeping definition of wages, such as was indulged in by the Court of Appeals, 540 F. 2d, at 302, and is urged by the Government here, is not consistent with the existing withholding system. . . . Congress chose simplicity, ease of administration, and confinement to wages as the standard in 1942. This was a standard that was intentionally narrow and precise. It has not been changed by Congress since 1942, although, of course, as is often the case, administrative and other pressures seek to soften and stretch the definition." (435 U. S. at 31.)

After holding that the reimbursements at issue were not "wages" subject to withholding, this Court noted that Congressional action, not administrative or judicial action, would be necessary to expand that definition:

> "This is not to say, of course, that the Congress may not subject lunch reimbursements to withholding if in its wisdom it chooses to do so by expanding the definition of wages for withholding. It has not done so as yet. And we cannot justify the Government's attempt to do so by judicial determination." (435 U. S. at 33.)

While FICA and FUTA taxes were not at issue in *Central Illinois,* they too are collected solely on "wages." The only difference in the "wage" definition among the three statutes is a stylistic difference. The withholding statute uses the phrase "all remuneration for services performed by an employee for his employer," whereas the FICA and FUTA statutes state "all remuneration for employment." "Employment" is defined by FICA and FUTA as "any service, of whatever nature, performed . . . by an employee for the person employing him. . . ." §§ 3121(b) and 3306(c).

In light of the legislative history under the employment tax acts, this extremely slight variation in statutory wording certainly does not support the major difference in approach to the FICA and FUTA statutes advocated by the government and the court below.

Other courts considering this matter, before and after *Central Illinois,* have concluded that the term "wages" has equivalent scope under FICA, FUTA and income tax withholding.

In *Royster Co.* v. *United States,* 479 F. 2d 387 (4th Cir. 1973), the Court of Appeals held that reimbursements paid by the taxpayer to its salesmen for their meal expenses while on the road were *not* wages for FICA, FUTA or income tax withholding purposes. The Fourth Circuit reviewed the definition of wages under the three employment tax statutes and concluded:

> "The district court was properly of opinion that the slight variations in the wording of the above statutes were inconsequential and that wages has the same essential meaning under all the statutes here in question. *The government in its brief agrees with this determination.* Thus, the case turns not upon any factual dispute but upon a reading of the pertinent statutes and the meaning to be given the term 'wages'." (479 F. 2d at 390 (emphasis added).)

This Court granted certiorari in *Central Illinois* because of the apparent conflict between the Seventh Circuit in that case and the decision of the Fourth Circuit in *Royster.* 435 U. S. at 24. While admittedly the *Central Illinois* case dealt only with income tax withholding, it was the *Royster* decision that this Court let stand. Nothing in the *Central Illinois* opinion suggests a different result would have been reached with respect to FICA and FUTA taxes, had they been an issue.

Following *Central Illinois,* in *Oscar Mayer & Co., Inc.* v. *United States,* unreported decision, 79-2 USTC ¶ 9572 (W. D.

Wis. 1979), *aff'd,* 623 F. 2d 1223 (7th Cir. 1980), the district court held that the value attributable to the personal use of company cars was not "wages" for purposes of FICA, FUTA or income tax withholding, and emphasized the unitary nature of the term "wages":

> "To hold that the slight differences in the wording of the definitions of wages constitutes a difference in intent would prevent employers from being able accurately to predict what should be withheld for income tax purposes and what should be withheld for FICA and FUTA purposes. Such a result would be unfair. Therefore, this Court holds that the slight variations in the statutes are inconsequential and the word 'wages' has the same essential meaning under all the statutes here in question. In reaching this decision, the Court is in agreement with the finding of the Fourth Circuit in *Royster Company* v. *United States,* 479 F. 2d 387 (4th Cir. 1973)." (*Oscar Mayer & Co., Inc.* v. *United States,* 79-2 USTC at 88,084 (opinion of Warren, D.J.).)

The Seventh Circuit Court of Appeals affirmed *Oscar Mayer,* specifically agreeing with this Court and the Fourth Circuit that the term "wages" is a unitary concept:

> "We are aware that the purposes of FICA and FUTA and the collection practices under their withholding provisions are in some respects different from those in the income tax laws. . . .
>
> "The seemingly inconsequential differences in statutory language belie an assertion that Congress intended to adopt broad policy differences in establishing the various withholding programs. Since there has been no showing by the Government to the contrary, *we conclude the Congress' use of the term 'wages' in both contexts reflects an intent that the term be construed for FICA and FUTA purposes congruently with the manner Central Illinois prescribes for the income tax provisions." (Oscar Mayer & Co., Inc.* v. *United States,* 623 F. 2d at 1226-27 (emphasis added).)

In *Hotel Conquistador, Inc.* v. *United States,* 597 F. 2d 1348 (Ct. Cl. 1979), cert. denied, 444 U. S. 1032 (1980), the Court of Claims held that meals provided free to casino employees "were not 'remuneration' and, therefore, not 'wages' " for FICA and FUTA purposes. 597 F. 2d at 1350. The Court of Claims agreed with the Fourth Circuit's view in *Royster* v. *United States,* 479 F. 2d 387 (4th Cir. 1973) that the term "wages" means the same thing for all employment tax purposes. The court went on to note the need for simplicity and ease of administration in the determination of the withholding, collection and payment of tax liability and stated that:

> "not . . . every expense incurred by the employer that tends to make the job more acceptable to the employee, constitutes 'remuneration' and 'wages'." (597 F. 2d at 1352.)

The government recognizes that the meals and lodging furnished by petitioner in this case and Amicus Curiae in its case were at the convenience of the employer and, thus, did not constitute "wages" subject to income tax withholding. It follows from the above discussion that the same meals and lodging cannot be "wages" for FICA or FUTA tax purposes.

II.

MEALS PROVIDED FOR THE EMPLOYER'S CONVENIENCE ARE NOT REMUNERATION AND, THUS, CANNOT BE TAXABLE WAGES FOR PURPOSES OF EITHER WITHHOLDING TAX LIABILITY OR COMPUTATION OF BENEFITS UNDER FICA AND FUTA

The term "wages" has consistently "meant remuneration '*if* paid for services performed by an employee for his employer.' " *Central Illinois, supra,* 435 U. S. at 27. Remuneration is the basic condition and key to producing wages under all three employment tax statutes. As long as the employer is *not* seeking to *compensate* the employee but is rather providing a benefit to the employee for the employer's own purposes, the concept of remuneration does not exist with respect to such benefits[2] and the items are not wages. *See, Commissioner* v. *Kowalski,* 434 U. S. 77 at 88 n. 21 (1977).

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[2] The court below has presented no valid reason why noncompensatory amounts should constitute "wages" for purposes of Social Security and unemployment benefits in order to increase the

Footnote continued on next page.

Section 3401(a) confines the definition of "wages" to "remuneration ... for services performed." Both FICA and FUTA define "wages" as "remuneration for employment." The theme underlying the Treasury regulations, administrative pronouncements and court decisions considering the term "wages" is that payments made or benefits bestowed upon an employee for noncompensatory business reasons of the employer—*i.e.*, in furtherance of the employer's business—cannot be characterized as remuneration for service performed, which is the crucial determination under all three employment tax acts.[3]

Footnote continued from previous page.

amount of benefits credited to an employee's account. Congress determined that *"remuneration"* for employment (wages) should determine the amount of Social Security and unemployment benefits. 49 Stat. 636 §§ 215 and 209, 42 U. S. C. §§ 415 and 409 (1979 Supp.).

[3] Courts have found meals or lodging to be wages for FICA and FUTA withholding *only in cases where the court found the benefits were, as a matter of fact, furnished as additional compensation* (i.e., not for the convenience of the employer). *See, S. S. Kresge Co.* v. *United States,* 218 F. Supp. 240 (E. D. Mich. 1963) and *S. S. Kresge Co.* v. *United States,* 379 F. 2d 309 (6th Cir. 1967) (lunch counter employees received free meal only in exchange for voluntary agreement to be available for work during employee's lunch hour, when they were not otherwise required to be available); *Pacific American Fisheries, Inc.* v. *United States,* 138 F. 2d 464 (9th Cir. 1943) (board and lodging provided to nonresident cannery workers in exchange for less pay than received by workers not receiving the benefits) and *Goldsboro Christian Schools, Inc.* v. *United States,* unreported decision, 79-1 USTC ¶ 9266 (E. D. N. C. 1978) (free housing provided to college teachers who were not required to perform any particular duties in the homes).

The Internal Revenue Service has also held that various items are *not* wages for *FICA, FUTA* or income tax withholding purposes, although the benefits were provided within the employment relationship. For example in *Rev. Rul. 76-71,* 1976-1 C. B. 308, the Service held that tuition reimbursements paid to employees for taking business related educational courses were not wages. In *Rev. Rul. 76-548,* 1976-2 C. B. 308, the Service held that cash allowances paid to miners for protective clothing were not wages.

In each of the decisions discussed above at pp. 8-13, as in the instant case, the benefits provided by the employers to its employees were not intended to be for, and were not measured by, services performed. As the court below stated:

> "The decision to afford these services (meals and lodging) was reached unilaterally by Rowan for its own economic reasons without either individual or collective bargaining. Identical meals and facilities are provided to all employees regardless of their status or rate of pay. An employee who for any reason does not elect to eat the meals furnished does not receive an allowance in lieu of them." (624 F. 2d at 702.)

These specific findings of the court below demonstrate conclusively that the meals and lodging provided to Rowan's employees cannot be characterized as remuneration for services performed. In holding that petitioner's policy, established for noncompensatory business reasons to further its business, results in "remuneration for employment," the court below departs from the realities of business life and stretches the statutory meaning of the term "wages."

The decision of the court below apparently was based on the court's own concept of "remuneration for employment" without regard to the statute, Congressional intent or the all-important consideration of establishing a system that will operate simply and fairly.

As discussed above (pp. 4-8), Congress elected to establish an intentionally narrow and precise scope to employers' obligations under the employment tax system because it served "the interest of simplicity and ease of administration." The present employment tax system works well because employers' obligations intentionally are simple and unambiguous. However, an indiscriminate extension of the employment tax system, as proposed by the government and the court below, creates

difficulties that are far-reaching. Employers would be forced to speculate at their own risk not only as to items subject to employment taxes but also to the value of those items.[4]

The court below obviously failed to appreciate the confusion it would introduce for employers when it extended the definition of "wages" to encompass virtually every economic benefit attributable to, or arising out of, the employment relationships. The court below apparently is telling employers that they may have employment tax obligations on other non-cash items (which may or may not be susceptible of valuation) which Congress and the Internal Revenue Service have not yet determined are taxable.[5]

The impact of the lower court's decision would be to place numerous employers in violation of the employment tax provisions and effect a radical overhaul of the employment tax system. The government's census (Gov't Pet. at 11) includes only those cases with the "meal-as-wage" issue. The number of pending cases would greatly increase if employers are required to guess as to what other items would be subject to employment taxes. The employment tax system was never intended to operate as the court below assumed.

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[4] The question of valuation becomes important in situations where employees are required under the terms of their employment agreement to reside on the employer's premises or dine at the employer's facilities. Certain employees may find "forced" indulgence to be an obligation rather than an economic benefit.

[5] These benefits include the so-called "fringe benefits" such as free parking, health services, use of company automobile, cafeterias, gymnasiums, etc. Congress and the Internal Revenue Service have been unable to articulate which of these benefits should be taxed. Former Treasury Secretary G. William Miller in a letter addressed to House Ways and Means Committee Chairman Daniel Rostenkowski referred to this problem: "The absence of national guidelines has seriously hampered the administration of the tax law, leading to uneven and inconsistent results." Daily Tax Rep. (BNA) No. 11, at J-14 (January 16, 1981).

CONCLUSION

For the reasons stated, the judgment of the court of appeals should be reversed.

Respectfully submitted,

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APPENDIX

APPENDIX

Internal Revenue Code of 1954 (26 U.S.C.) (1976):

SECTION 3101. RATE OF TAX.

(a) *Old-Age, Survivors, and Disability Insurance*—In addition to other taxes, there is hereby imposed on the income of every individual a tax equal to the following percentages of the wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b))—

* * * *

(b) *Hospital Insurance*—In addition to the tax imposed by the preceding subsection, there is hereby imposed on the income of every individual a tax equal to the following percentages of the wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b))—

* * * *

SECTION 3102. DEDUCTION OF TAX FROM WAGES.

(a) *Requirement*—The tax imposed by section 3101 shall be collected by the employer of the taxpayer, by deducting the amount of the tax from the wages as and when paid. . . .

* * * *

SECTION 3111. RATE OF TAX.

(a) *Old-Age, Survivors, and Disability Insurance*—In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 3121(a)) paid by him with respect to employment (as defined in section 3121(b))—

* * * *

(b) *Hospital Insurance*—In addition to the tax imposed by the preceding subsection, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 3121(a)) paid by him with respect to employment (as defined in section 3121 (b))—

* * * *

SECTION 3121. DEFINITIONS.

(a) *Wages*—For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; . . .

* * * *

SECTION 3301. RATE OF TAX.

There is hereby imposed on every employer (as defined in section 3306(a)) for the calendar year 1970 and each calendar year thereafter an excise tax, with respect to having individuals in his employ, equal to 3.2 percent of the total wages (as defined in section 3306(b)) paid by him during the calendar year with respect to employment (as defined in section 3306(c)).

* * * *

SECTION 3306. DEFINITIONS.

(b) *Wages*—For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; . . .

* * * *

SECTION 3401. DEFINITIONS.

(a) *Wages*—For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; . . .

SECTION 3402. INCOME TAX COLLECTED AT SOURCE.

(a) *Requirement of Withholding*—Every employer making payment of wages shall deduct and withhold upon such wages (except as otherwise provided in this section) a tax determined in accordance with the following tables . . .